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ALEXANDER L. STEVAS,
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In the
Supreme Court of the United States

October Term, 1981

No. 82-145

JAMES MARTIN SMITH,

Petitioner

vs.

DOUGLAS GONZALES, et. al.

Respondent

PETITIONER'S REPLY BRIEF

ANDREW J. RUZICHO
398 S. Grant, Suite 211
Columbus, Ohio 43215

LOUIS A. JACOBS
398 S. Grant, Suite 211
Columbus, Ohio 43215
(614) 221-8620

Counsel for Petitioner

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REPLY BRIEF

On October 4, 1982, respondent served his brief in opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Petitioner files his Reply Brief pursuant to Rule 24, Rules of the Supreme Court.

In Respondent's brief, he raises a factual dispute as to whether the respondent threatened the petitioner's daughter during her interrogation with prosecution for incest in order to have her admit an incestuous relationship, and then procure an arrest warrant from the district attorney's office based upon the admission. The respondent cites certain testimony from the trial transcript which, in the opinion of the petitioner, misleads this Court of that question. Petitioner cites to the Court the actual testimony on this point as follows:

Q. Now, during this meeting with Sargeant Lane, Mrs. McDowell, isn't it a fact that he told you that incest was against the law, and that you could be prosecuted for incest? Didn't he tell you that?

A. Yes, he did.

(R., p. 11, lines 19-23).

Q. That upset you, didn't it, Mrs. McDowell, the fact that he told you that incest was against the law and that you could be prosecuted for it? That upset you, didn't it?

A. It moreorless shocked me because I didn't know it was against the law.

(R., p. 112, lines 6-11).

Q. Didn't Sargeant Lane tell you in so many words at that interview that if you filed the incest charge you could put your Dad out of commission for a while and that you and Steve could then get married? In so many words, didn't he tell you that?

A. Yes.

(R., p. 113, lines 7-12).

In addition to the above testimony, the Fifth Circuit, in rendering its decision, stated the facts most favorably to the petitioner and assumed that the respondent threatened petitioner's daughter with arrest for incest (Appendix to Petition, A-2, A-3). The respondent in his brief chose to oppose the writ by arguing a factual dispute, which is no dispute at all since the trial record and the Fifth Circuit's opinion support the petitioner's position. The respondent did not address substantively the cases cited by the petitioner raising the conflict between the circuits.

On the issue involving the polygraph test, the respondent fails to point out that the polygraph test given petitioner's daughter occurred on January 19, 1978, while the respondent procured the arrest warrant on May 31, 1977, approximately eight months prior to the test. The District Court's stated purpose for the admissibility of the test results was to show the probable cause of the respondent on the arrest warrant. The petitioner submits that the polygraph test results could not support the probable cause even if the polygraph test results were admissible. The district attorney who was prosecuting the incest charge in state court testified at trial that the test results did not support any probable cause on the arrest warrant.

In summary, the respondent has not fully related to this Court the facts upon which this petition is based, and the effect of respondent's brief is misleading, and contrary to the basis upon which the Fifth Circuit made its decision. The petitioner respectfully requests the Court to grant the writ of certiorari and review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

ANDREW J. RUZICHO
398 S. Grant, Suite 211
Columbus, Ohio 43215
(614) 221-8620

LOUIS A. JACOBS
398 S. Grant, Suite 211
Columbus, Ohio 43215
(614) 221-8620

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that three copies of the Reply Brief were mailed, postage prepaid, to William H. Cooper, 5551 Corporate Blvd., Suite 1-H, P.O. Box 14647, Baton Rouge, LA 70898 this 22 day of October, 1982. I further certify that all parties required to be served have been served.

ANDREW J. RUZICHO
398 S. Grant, Suite 211
Columbus, Ohio 43215

Counsel for Petitioner